

TO:

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450
or
Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

**REPORT ON THE
FILING OR DETERMINATION OF AN
ACTION REGARDING A PATENT OR
TRADEMARK**

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Colorado on the following

PATENT

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
06-cv-00445 LTB-PAC	3/13/06	FOR THE DISTRICT OF COLORADO
PLAINTIFF		DEFENDANT
eSoft, Inc.		SonicWALL, Inc.
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 6,1961,773		Please see copy of Complaint attached hereto
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT OR	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK			
1					
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5					

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

Order 12/17/2008

CLERK	(BY) DEPUTY CLERK	DATE
GREGORY C. LANGHAM	Linda Kahoe	1/9/2009

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 06-cv-00445-PAB-KLM

eSOFT, INC., a Delaware Corporation,

Plaintiff,

v.

SONICWALL, INC., a California Corporation,

Defendant.

**JOINT REPORT REGARDING THE STATUS OF THE CASE AND THE INTER
PARTES REXMAINATION OF U.S. PATENT NO. 6,961,773**

Pursuant to an Order of this Court dated November 24, 2008 (Docket No. 73), the parties, through their respective counsel, hereby submit this report regarding the status of the case and the *Inter Partes* Reexamination of U.S. Patent No. 6,961,773 ("the '773 patent").

Plaintiff eSoft, Inc. ("eSoft") initiated this action on March 13, 2006, by filing a complaint alleging that SonicWALL infringes the '773 patent. At approximately the same time, eSoft filed separate complaints against five other parties, each complaint alleging infringement of the '773 patent. Those complaints resulted in separate actions against the accused infringers, including Case No. 1:06-cv-EWN-PAC, against defendant Blue Coat Systems ("Blue Coat"); and Case No. 1:06-cv-EWN-MJW, against defendant St. Bernard Systems, Inc ("St. Bernard").

On January 8, 2007, Blue Coat and St. Bernard filed a Request for *Inter Partes* Reexamination with the U.S. Patent and Trademark Office. Blue Coat and St. Bernard requested that the USPTO reexamine the '773 patent in light of eighteen prior art references, and offered arguments that all eight claims of the '773 patent are invalid based on those references.

SonicWALL did not take part in the Request for *Inter Partes* Reexamination. Both Blue Coat and St. Bernard have reached settlement with eSoft and are no longer involved in the *Inter Partes* Reexamination.

On February 12, 2007, the Court granted SonicWALL's motion to stay this action pending the outcome of the *Inter Partes* Reexamination proceedings (Docket No. 67). SonicWALL and eSoft have not engaged in any communication with each other since this case was stayed.

The USPTO granted the Request for *Inter Partes* Reexamination on March 23, 2007 (Application No. 95/000211) and indicated that an office action would follow in due course. The USPTO issued a non-final office action on September 15, 2008, rejecting all claims of the '773 patent as anticipated by numerous prior art references. In particular, the Examiner rejected all eight claims under 35 U.S.C. § 102(b) as being anticipated by each of three separate references; rejected all eight claims under 35 U.S.C. § 102(a) and (e) as being anticipated by each of two other references; and rejected numerous individual claims as being anticipated by three additional references.

eSoft filed its response to the office action on November 25, 2008. The Examiner is currently considering that response, and the parties are unable to predict when the Examiner will take further action.

Dated: December 10, 2008

Respectfully submitted,

eSOFT, INC., Plaintiff

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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on December 10, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 06-cv-00445-PAB-KLM

ESOFT, INC.

Plaintiff,

v.

SONICWALL, INC.

Defendant.

ORDER

On February 12, 2007, the Court ordered this case stayed pending the outcome of an *Inter Partes* Reexamination [Docket No. 67]. On December 10, 2008, pursuant to an order of the Court [Docket No. 73], the parties filed a status report in the case [Docket No. 74]. According to that report, the *Inter Partes* Reexamination is ongoing. With no discernible end-date to the reexamination process and any subsequent appeals, it is

ORDERED that this case be administratively closed pursuant to D.C.COLO.LCivR 41.2. The case may be reopened by any party showing good cause.

DATED this 17th day of December, 2008.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge